

July 20, 2012

Marlene H. Dortch, Secretary Federal Communications Commission 445 Twelfth St., S.W. Washington, DC 20554

> Re: Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo, LLC for Consent to Assign Licenses; Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC for Consent to Assign Licenses, WT Docket No. 12-4

## Dear Ms. Dortch:

Hawaiian Telcom Communications, Inc. ("HTCI") supports and agrees with the concerns and proposals set forth in the letters filed on July 10, 2012 in the above-captioned proceeding by the Independent Telephone & Telecommunications Alliance ("ITTA") and FairPoint Communications, Inc. ("FairPoint"), and the letter filed on July 13, 2012 by CenturyLink.

First, in considering the above-referenced Application, the Commission must consider the impact of the agency, resale and joint operating agreements filed in this proceeding by the Applicants (the "Commercial Agreements"). These agreements are critical parts of the overall transaction between Verizon Wireless and the cable companies. As David Cohen, Executive Vice President of Comcast, made clear when asked about the relationship between the Commercial Agreements and the spectrum transfer:

"The transaction is an integrated transaction. There was never any discussion about selling the spectrum without having the commercial agreements."

The Applicants do not propose merely to transfer spectrum, but intend as part of the arrangement to use the Commercial Agreements to consolidate significantly their wired and wireless services. The result will be less intermodal competition and higher barriers to entry for stand-alone wired providers.

Second, significant, critical portions of the Commercial Agreements have been available for review subject to Highly Confidential designation of the applicable FCC protective orders and thus only an incomplete picture has been available to HTCI. Portions of the Commercial Agreements have not even been available to outside counsel who signed the protective orders. We rely on the Commission and staff to review the Commercial Agreements in their entirety and reach out to the industry to discuss their impact.

Eliza Krigman, "Comcast Executive Defends Verizon-SpectrumCo Deal," POLITICO PRO (Mar. 8, 2012).



Based on what has been available, HTCl agrees with ITTA and FairPoint that there are at least three major threats to the public interest posed by the pending transactions:

- The preferential sales and marketing arrangements among the Applicants and their joint development of proprietary technology have the potential to impair competition in the wireline backhaul market and reduce investment in wireline broadband networks.
- The close alliance among the largest wireless broadband network operator in the
  nation and the dominant cable operators in Hawaii and many other parts of the
  country (who also are vertically integrated broadband and content providers) has the
  potential to stifle competitive alternatives for delivery of video and other content.
- If the Commercial Agreements are allowed, HTCI fears that, lacking seamless
  access to integrated and proprietary wireline-wireless handoff technology that will be
  uniquely controlled by the Applicants, it and other carriers like it will be unable to
  reach consumers.

HTCl supports imposing the seven conditions proposed by ITTA and supported by FairPoint as the minimum needed for the Commission to find that the pending transactions would serve the public interest:

- 1. Prohibit preferential backhaul arrangements among the Applicants.
- 2. Prohibit discrimination in access to video content controlled by any of the Applicants.
- 3. Prohibit discriminatory or proprietary technical standards for hand-off between wireless and wireline networks, data sharing, content storage and access to competitive networks.
- 4. Prohibit the Applicants from enforcing data usage limits on customers using unaffiliated service providers unless the same data usage limits apply to customers that take the same service from Applicants.
- 5. Prohibit exclusivity in broadband retail offerings by Verizon Wireless.
- 6. Require the Applicants to follow the same porting processes that are required of telecommunications carriers under Part 64 of the Commission's rules.
- Prohibit the cable Applicants from discriminatory or exclusionary sales practices for cable advertising.

HTCl supports ITTA's request that the Commission require Applicants to broaden their disclosure of the Commercial Agreements so, at a minimum, complete copies of the Commercial Agreements are made available to outside counsel who have signed the second protective order, and in-house counsel may discuss with those outside counsel the impact of these arrangements on affected customers and markets. The Commercial Agreements would

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appear to threaten competition in the delivery of video and other content to consumers over wired networks, especially in Hawaii.

It is critical to note that Applicants' generic arguments about the availability of competitive alternatives and the impact of the Commercial Agreements fail to account for the unique challenges to effective competition within the state of Hawaii market for MVPD services. Time Warner Cable is the dominant cable TV operator throughout the State of Hawaii and the second largest cable TV operator in the United States<sup>2</sup>. Time Warner Cable provides MVPD services to approximately 94 percent of the households on the main island of Oahu, a percentage that is uniquely high. The FCC itself has recognized that MVPD competition is particularly hampered in Hawaii because satellite dish MVPDs, due to the unfavorable positioning of their satellites, have lower penetration rate in Hawaii than in other areas of the country.<sup>3</sup>

HTCI maintains that these conditions unique to Hawaii exacerbate the anticompetitive effects of the proposed deal and related arrangements. Given HTCI's limited market penetration in the paid video market at this point and the challenge it faces trying to penetrate a market long dominated by Time Warner Cable, any arrangement that curtails its ability to grow and provide effective competition to Time Warner Cable will mean fewer competitive forces in the market place to restrain any anticompetitive conduct (e.g., increase prices or reduce output) engaged in by Time Warner Cable and/or Verizon Wireless.

Please contact Francis Mukai at (808) 546-1278 or francis.mukai@hawaiiantel.com should you have any questions.

Very truly yours.

John T. Komeiji

Senior Vice President and General Counsel

CC:

Sandra K. Danner, Broadband Division Wireless Telecommunications Bureau

<sup>&</sup>lt;sup>2</sup> Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming (Thirteenth Annual Report), MB Docket No. 06-189, 24 FCC Rcd 542, ¶ 31, Table 2 (2009) ("Thirteenth Annual Video Competition Report").

<sup>&</sup>lt;sup>3</sup> *Id.*, ¶¶ 257-60.